Supreme Court, U.S.
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No. 02-605

IN THE

Supreme Court of the United States

R. SCOTT HUTSON,
Petitioner,

v.

RENT-A-CENTER, INC.,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page No.
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
RULE 29.6 STATEMENT	iv
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	1
I. THE ELEVENTH CIRCUIT'S OPINION DOES NOT CONFLICT WITH ANY CASELAW FROM ANY COURT OR WITH ANY STATUTORY AUTHORITY	2
A. The Eleventh Circuit Opinion Does Not Conflict with Any Caselaw	2
B. The Eleventh Circuit Opinion Does Not Conflict with *Brooks* or *Red Ball*	4
C. Statutory Authority Supports Respondent's Position Without Conflict	5
D. The Recodification of §10524 Has Been Addressed By the Courts Without Conflict	8
II. PETITIONER'S FAILURE TO PRESENT HIS POSITION WITH ACCURACY IS SUFFICIENT REASON FOR THE COURT TO DENY HIS PETITION	10
III. PETITIONER HAS ABANDONED HIS APPEAL OF THE LOWER COURTS' DENIAL OF PETITIONER'S MOTION TO AMEND	11
IV. CONCLUSION	12

TABLE OF AUTHORITIES

CASES

Page Nos.

Bilyou v. Duchess Beer Distrib., Inc.,
300 F.3d 217 (2d Cir. 2002) 3, 7, 9, 10, 11

Brooks Transp. Co., Inc. v. U.S.,
93 F. Supp. 517 (E.D. Va. 1950), *aff'd*, 340
U.S. 925 (1951) 4

Friedrich v. U.S. Computer Svc's.,
974 F.2d 409 (3d Cir. 1992) 3, 7

Griffin v. Cosolidated Foods Corp.,
771 F.2d 826 (4th Cir. 1985) 3

Helvering v. R.J. Reynolds Tobacco Co.,
306 U.S. 110 (1939) 8

Hutson v. Rent-A-Center, Inc.,
209 F. Supp. 2d 1353 (M.D. Ga. 2001)..... 1

Klitzke v. Steiner Corp.,
110 F.3d 1465 (9th Cir. 1997) 3, 7, 8, 9

Lorillard v. Pons,
434 U.S. 575 (1978) 8

McGuiggan v. CPC Int'l. Inc.,
84 F. Supp. 2d 470 (S.D.N.Y. 2000) 4

Opellika Royal Crown Bottling Co. v. Goldberg,
299 F.2d 37 (5th Cir. 1962) 3

Red Ball Motor Freight, Inc. v. Shannon,
377 U.S. 311 (1964) 4

Ryder Truck Lines, Inc. v U.S.,
716 F.2d 1369 (11th Cir. 1983), cert. denied,
466 U.S. 927 (1984) 7

Sinclair v. Beacon Gasoline Co.,
447 F. Supp. 5 (W.D. La. 1976), *aff'd*, 571 F.2d 978 (5th Cir. 1978) 3

Thomas v. Wichita Coca-Cola Bottling Co.,
968 F.2d 1022 (10th Cir. 1992), *cert. denied*, 506 U.S. 1013 (1992) 3

Webb v. Athens Newspapers, Inc.,
999 F. Supp. 1464 (M.D. Ga. 1998) 4

STATUTES AND RULES

29 U.S.C. §213(b)(1) ("13(b)(1)") 1, 2, 3, 4, 6, 7, 8, 9, 10, 11

49 U.S.C. §3102(b)(2) 7

49 U.S.C. § 10524 ..... 5, 7, 8, 9, 11

49 U.S.C. §13102(13) 5

49 U.S.C. §13501 6

49 U.S.C. §13505 ..... 5, 7, 8, 9, 10, 11

49 U.S.C. §31502 ..... 1, 3, 4, 5, 6, 7, 10

SUP. CT. R. 14.1(a) 12

SUP. CT. R. 14.4 ..... 10, 11

RULE 29.6 STATEMENT

Respondent Rent-A-Center, Inc. has no parent corporation, and there are no publicly traded companies that own 10% or more of Respondent's stock.

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Rent-A-Center, Inc. respectfully suggests that the Court should deny the Petition for Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Eleventh Circuit.

STATEMENT OF THE CASE

As does Petitioner, Respondent adopts the District Court's Findings of Fact as a sufficient Statement of the Case for the purposes of this Petition. The District Court's Opinion is published at 209 F. Supp.2d 1353 (M.D. Ga. 2001).

REASONS FOR DENYING THE PETITION

The sole question presented by the Petition is whether employees of "motor private carriers" are subject to the jurisdiction of the Secretary of Transportation and, therefore, are exempt from overtime pay under the Fair Labor Standards Act ("FLSA") Section 29 U.S.C. 213(b)(1) ("13(b)(1)"). Petitioner argues that the Eleventh Circuit Court of Appeals and the District Court erred because "case law precedent by this Court or by statutory enactment" has never included the Secretary's jurisdiction over "motor private carriers". (Petitioner's Brief at i). Contrary to Petitioner's assertion, Congress has explicitly authorized the Secretary of Transportation to establish qualifications and maximum hours of service for employees of "motor private carriers." 49 U.S.C. §31502. Moreover, courts throughout the United States have uniformly applied the Section 13(b)(1) exemption to motor private carriers – carriers whose primary business is not transportation.

Neither the Eleventh Circuit's unpublished opinion nor the Middle District of Georgia's published opinion conflicts with any statutory authority or caselaw. Each

United States Court of Appeals that has addressed this specific issue has ruled that "motor private carriers" are entitled to the exemption. No precedent from this Court or any statutory authority conflicts with the ruling of the lower courts. In short, Petitioner has presented no genuine conflict between the Circuits to be resolved by this Court, nor has Petitioner shown that the Eleventh Circuit has decided an important question of federal law that should be addressed by this Court. The Eleventh Circuit's ruling was proper in all respects, and was consistent with the decisions of the other Circuits and of this Court. Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

I.
THE ELEVENTH CIRCUIT'S OPINION DOES NOT CONFLICT WITH ANY CASELAW FROM ANY COURT OR WITH ANY STATUTORY AUTHORITY

Petitioner argues that the Eleventh Circuit's ruling is based on no caselaw or statutory authority and contradicts precedent from this Court. In making this argument, Petitioner simply ignores significant authority and caselaw considered and cited by the Courts below, and in so doing seriously misleads the Court.

A. The Eleventh Circuit Opinion Does Not Conflict with Any Caselaw.

Apart from Petitioner's unsupported declaration, he can offer no authority that supports his position or conflicts with the caselaw that supports Respondent's position. FLSA Section 13(b)(1) – the motor carrier exemption[1] – exempts from the overtime requirements

[1] The 13(b)(1) exemption and the "motor carrier exemption" are used interchangeably by the Courts and throughout this brief.

of the FLSA those employees "with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 31502 of Title 49..." 29 U.S.C. §213(b)(1).

Courts throughout the United States have uniformly applied the motor carrier exemption to motor private carriers - carriers whose primary business is not transportation.[2] *Opellika Royal Crown Bottling Co. v. Goldberg*, 299 F.2d 37, 42-43 (5th Cir. 1962) (driver-salesman for beverage distributor exempt pursuant to 13(b)(1)); *Griffin v. Cosolidated Foods Corp.*, 771 F.2d 826, 827-28 (4th Cir. 1985) (driver salesman for panty hose manufacturer and distributor exempt pursuant to 13(b)(1); *Thomas v. Wichita Coca-Cola Bottling Co.*, 968 F.2d 1022, 1026 (10th Cir. 1992), *cert. denied*, 506 U.S. 1013 (1992) (route drivers for beverage bottling company exempt pursuant to 13(b)(1)); *Friedrich v. U.S. Computer Svc's.*, 974 F.2d 409, 419 (3d Cir. 1992) (computer field engineers who drive passenger cars with tools and equipment in interstate commerce are subject to the Secretary of Transportation's jurisdiction and are therefore exempt from overtime pursuant to 13(b)(1)); *Klitzke v. Steiner Corp.*, 110 F.3d 1465, 1467-69 (9th Cir. 1997) (delivery drivers for linen distributor exempt pursuant to 13(b)(1)); *Bilyou v. Duchess Beer Distrib., Inc.*, 300 F.3d 217, 225 (2d Cir. 2002) (route driver for beverage distributor exempt pursuant to 13(b)(1)); *Sinclair v. Beacon Gasoline Co.*, 447 F. Supp. 5, 10 (W.D. La. 1976), *aff'd*, 571 F.2d 978 (5th Cir. 1978) (employees of natural gas well servicing company who drive tools and equipment in company-furnished pick-up trucks in interstate commerce exempt pursuant to

[2] In addition to these cases, many other decisions of the Courts of Appeal and District Courts have applied the 13(b)(1) exemption to motor private carriers.

13(b)(1)); *Webb v. Athens Newspapers, Inc.*, 999 F. Supp. 1464, 1468 (M.D. Ga. 1998) (newspaper delivery drivers are exempt pursuant to 13(b)(1)); *McGuiggan v. CPC Int'l Inc.*, 84 F. Supp.2d 470, 482 (S.D.N.Y. 2000) (delivery drivers for bakery products distributor exempt pursuant to 13(b)(1)).

Petitioner's Brief does not identify even one case that conflicts with the holdings of those cases that have applied the overtime exemption to "motor private carriers". Therefore, it is evident that no conflict exists between the instant Eleventh Circuit opinion and that of any other Circuit.

B. The Eleventh Circuit Opinion Does Not Conflict with *Brooks* or *Red Ball*.

Petitioner attributes new and remarkable meanings to this Court's ruling in *Red Ball Motor Freight, Inc. v. Shannon*, 377 U.S. 311 (1964) and the district court's ruling in *Brooks Transp. Co., Inc. v. U.S.*, 93 F. Supp. 517 (E.D. Va. 1950), *aff'd*, 340 U.S. 925 (1951), in a failed attempt to create conflict where none exists. These cases do not support Petitioner's position, nor do they create any conflict whatsoever.

Both Petitioner and Respondent agree that the question presented concerns whether "motor private carriers"[3] are subject to the motor carrier exemption to the FLSA. Neither *Brooks* or *Red Ball* mentions the Fair Labor Standards Act, overtime, or exemption from overtime. Specifically, they do not address the 13(b)(1) exemption from overtime. Rather, the *Brooks* and *Red Ball* cases address whether motor private carriers are subject to Interstate Commerce Commission ("ICC")

[3] The terms "private motor carrier" and "motor private carrier" have the identical meaning and are used interchangeably in the relevant statutes. *See* 49 U.S.C. §31502(b).

regulation (*e.g.*, licenses and permits). These decisions merely hold that the ICC (now Surface Transportation Board ("STB")) does not have jurisdiction over motor private carriers for purposes of regulation (i.e., licenses and permit requirements).

The cases cited by Petitioner merely hold that motor private carriers are eligible for a "primary business" exemption from the Secretary of Transportation's regulatory burden such as licensing and permit requirements. However, Petitioner misconstrues these cases and wrongly concludes that the "primary business" exemption of 49 U.S.C. §13505 [formerly §10524] also denies the Secretary of Transportation the power to establish qualifications and maximum hours of service of employees when needed to promote safety of operation – despite the fact that an entirely separate section of the Motor Carrier Act explicitly grants such authority to the Secretary of Transportation (49 U.S.C. §31502) and makes it applicable to motor private carriers like Rent-A-Center.[4]

C. Statutory Authority Supports Respondent's Position Without Conflict.

Petitioner fails to bring to the Court's attention 49 U.S.C. §31502 — the statutory provision that explicitly grants the Secretary of Transportation the authority to

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[4] The term "motor private carrier" means a person, other than a motor carrier, transporting property by motor vehicle when

> (A) the transportation is as provided in section 13501 of this title;
>
> (B) the person is the owner, lessee, or bailee of the property being transported; and
>
> (C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

49 U.S.C. §13102(13).

prescribe requirements for qualifications and maximum hours of service for employees of "motor private carriers" (49 U.S.C. §31502).

The FLSA overtime exemption in Section 13(b)(1) refers to employees over whom the Secretary of Transportation has the "power to establish qualifications and maximum hours of service pursuant to the provisions of Section 31502 of Title 49." Section 31502 states in part:

> (a) Application.-This section applies to transportation-
>
> (1) described in sections 13501[5] and 13502 of this title...
>
> * * * * *
>
> (b) Motor carrier and **private motor carrier** requirements.-The Secretary of Transportation may prescribe requirements for-
>
> (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and
>
> (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a **motor private carrier**, when needed to promote safety of operation.

49 U.S.C. §31502(a), (b) [emphasis supplied]

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[5] Title 49 U.S.C. §13501 provides in part: "The Secretary and the [Surface Transportation] Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier (1) between a place in (A) a State and a place in another State; (B) a State and another place in the same State through another State..."

Thus, Congress has specifically delegated to the Secretary of Transportation the power to regulate employees of motor carriers and motor private carriers whose duties affect safety on the highways when interstate shipments of property are involved. 49 U.S.C. §31502.

In the face of this explicit statutory language, Petitioner argues that 49 U.S.C. §13505 (and its predecessor §10524) excludes employees of motor private carriers from the 13(b)(1) exemption. The "primary business" test of §13505 and its predecessor §10524, however, merely applies to licensing, permit and certificate requirements. *Friedrich*, 974 F.2d at 413 (*citing Ryder Truck Lines, Inc. v. U.S.*, 716 F.2d 1369, 1373, n.4 (11th Cir. 1983), cert. denied, 466 U.S. 927 (1984)); *Klitzke*, 110 F.3d at 1468; *Bilyou,* 300 F.3d at 226.

Petitioner cites no authority that supports his interpretation of §13505. All the Courts of Appeals that have addressed this specific issue have uniformly held that Section 10524 (now Section 13505) has no effect on the overtime exemption under 13(b)(1).

In *Friedrich,* the Third Circuit rejected the very argument Petitioner makes here:

> Section 10524(a) has no application in this case. The section merely exempts motor private carriers from the licensing, permit, and certificate requirements imposed upon motor carriers by the ICC pursuant to 49 U.S.C. §§ 10921-10935; *it does not serve to deprive the DOT of its power to regulate the qualifications and maximum hours of service of employees of a motor private carrier pursuant to 49 U.S.C. §3102(b)(2).*[6]

Friedrich, 974 F.2d at 413. [emphasis supplied]

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[6] 49 U.S.C. §3102 was recodified at 49 U.S.C. §31502 in 1996.

In *Klitzke,* the Ninth Circuit also rejected Petitioner's faulty hypothesis:

> The subchapter to which it refers deals only with regulation by the ICC. *See* 49 U.S.C. §10521. Thus, "the section [10524, now 13505] merely exempts motor private carriers from the licensing, permit and certificate requirements imposed upon motor carriers by the ICC pursuant to 49 U.S.C. 10921-10935; *it does not serve to deprive the [Department of Transportation] of its power to regulate the qualifications and maximum hours of service of employees of motor private* carriers pursuant to 49 U.S.C. §3102(b)(2)."

Klitzke, 110 F.3d at 1468 [emphasis supplied] (*quoting Friedrich,* 974 F.2d at 413).

D. The Recodification of § 10524 Has Been Addressed By the Courts Without Conflict.

Petitioner's assertion that the recodification of §10524 in 1996 somehow changes the analysis of the 13(b)(1) exemption as it applies to motor private carriers has been explicitly rejected. Petitioner represents to this Court that no court has addressed this issue since the recodification. This assertion is simply not true.

The *Klitzke* Court issued its opinion in 1997 after the recodification of §10524 and the Court specifically recognized that §10524 was recodified as §13505.[7] Moreover, the *Klitzke* court specifically held that the change

[7] Where Congress reenacts a statute without substantive change, it generally is presumed to be aware of and to adopt any administrative or judicial interpretations by reenactment. *See Lorillard v. Pons,* 434 U.S. 575, 580-81 (1978); *See also Helvering v. R.J. Reynolds Tobacco Co.,* 306 U.S. 110, 115 (1939) (Reenactment without change gives such interpretations the force of law).

and reenactment would not have affected the outcome of the case. *Id.* at 1467 n. 2, 1468 n.5. Thus, Petitioner's argument that the 1996 recodification of §10524 as §13505 changes the previous analysis of the Courts was specifically rejected by *Klitzke*.

Recently, the United States Court of Appeals for the Second Circuit thoroughly addressed and rejected Petitioner's position upon which this appeal is premised. In *Bilyou v. Duchess Beer Distrib., Inc.*, 300 F.3d 217 (2d Cir. 2002), the Court specifically held that Section 13505 has no bearing on the overtime exemption under 13(b)(1).

> On the basis of [Defendant's] involvement in another primary business other than transportation, §13505 exempts it from the Secretary's jurisdiction, as specified "*in this part,* over transportation of property by motor vehicle." 49 U.S.C. §13505 (emphasis added). Section 13505 is a provision of Part B of Subtitle IV of Title 49, 49 U.S.C. §§ 13101-14914. That Part contains provisions authorizing the DOT to enact registration and security (insurance and bonding) requirements for motor carriers, freight forwarders, and brokers. *See* 49 U.S.C. §13902 (registration requirements for motor carriers); §13903 (registration requirements for freight forwarders); §13904 (registration requirements for brokers); *see also* §13906 (bonding and insurance requirements for motor carriers, freight forwarders, and brokers).
>
> Section 13505 has no bearing on the Secretary's power, as described in 29 U.S.C. §213(b)(1), "to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of Title 49." Section 31502 falls under a different part of Title 49. It falls in Part B of Subtitle VI

> relating to "Motor Vehicle and Driver Programs." The fact that § 13505 denies the Secretary power to prescribe economic and licensing regulations of the sort covered in Subtitle IV, Part B, in no way contradicts the Secretary's authority, established in a different part of the Motor Carrier Act, to set qualifications and maximum hours of service for drivers to promote safety of operations. That is the crucial inquiry under FLSA's §213(b)(1), and, as shown above, [Defendant] satisfies those criteria.

Bilyou, 300 F.3d at 226.[8]

Therefore, the Third, Ninth, and Second Circuits, and now the Eleventh Circuit in the instant matter, have explicitly and uniformly rejected Petitioner's faulty premise. There is no conflict whatsoever between the Circuits on this issue.

II.
PETITIONER'S FAILURE TO PRESENT HIS POSITION WITH ACCURACY IS SUFFICIENT REASON FOR THE COURT TO DENY HIS PETITION

Supreme Court Rule 14.4 states that "[t]he failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition." Here, Petitioner has presented deceptive and inaccurate arguments to the Court.

In his Petition, Petitioner fails even to mention 49 U.S.C. §31502, which explicitly grants authority to the

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[8] *See Bilyou*, 300 F.3d at 226-229 for an excellent discussion of the history and purpose of the precursor provisions of the Motor Carrier Act.

Secretary of Transportation to establish qualifications and maximum hour requirements for employees of motor private carriers. This section is essential to an adequate understanding of the issues relevant to this case, yet Petitioner inexcusably makes no mention of this statute whatsoever. Instead, Petitioner cites to 49 U.S.C. §13505, which he incorrectly represents as the relevant statutory provision.

Petitioner's statement that the District Court opinion in the instant case deviates from statutory and caselaw authority (*See* Petitioner's Brief at i, 4, 11) is simply wrong. As stated above, the courts have uniformly applied the 13(b)(1) exemption to motor private carriers.

Finally, Petitioner's assertion (*See* Petitioner's Brief at p.8) that courts have not analyzed the exemption since the recodification of §10524 is completely untrue. The Ninth Circuit addressed the effect of the recodification in *Klitzke*, 110 F.3d at 1467 n.2, 1468 n.5, which holding Petitioner misrepresents. Most recently the Second Circuit in *Bilyou* specifically addressed this Petitioner's argument, and rejected it completely, *Bilyou*, 300 F.3d at 225-229, which Petitioner simply ignores.

Obviously Petitioner did not accurately present the Court with "whatever is essential to ready and adequate understanding of the points requiring consideration." Therefore, this failure alone is "sufficient reason for the Court to deny..." the Petition. SUP. CT. R. 14.4.

III.
PETITIONER HAS ABANDONED HIS APPEAL OF THE LOWER COURTS' DENIAL OF PETITIONER'S MOTION TO AMEND

The District Court denied Petitioner's motion to

amend his complaint to add class allegations. The Eleventh Circuit affirmed. Petitioner makes sporadic comments throughout his Brief in Support of his Petition about this refusal to permit amendment but does not present it as a "Question Presented" for this Court to consider. Therefore, Petitioner has abandoned this claim. SUP. CT. R. 14.1(a). In any event, Petitioner has presented no reasons why the lower courts' denial of his motion was error.

IV.
CONCLUSION

For the foregoing reasons, Respondent prays that Petitioner's petition for a writ of certiorari be denied.

Respectfully submitted,

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